

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD J. KRAMER, CHRISTOPHER
GATES, GLEN E. WEBSTER, Individually
and on behalf of Nominal Defendant Armor
Electric Motor & Industrial Services, Inc.,

Plaintiffs,

DECISION AND ORDER
12-CV-813A

v.

THOMAS M. PAWLAK, LISA PAWLAK,
ARMOR ELECTRIC MOTOR & INDUSTRIAL
SERVICES, INC.,

Defendants.

This action, filed by minority shareholders of Armor Electric Motor & Industrial Services, Inc. ("Armor Electric"), against majority shareholders and officers of Armor Electric, Thomas M. Pawlak and Lisa Pawlak, is pending after removal from state court on federal-question jurisdiction. The plaintiff minority shareholders, Richard J. Kramer, Christopher Gates, and Glen E. Webster, are also employees of Armor Electric. Plaintiffs Kramer, Gates, and Webster allege corporate malfeasance by the defendants and Armor Electric amounting to civil RICO violations pursuant to 18 U.S.C. §§ 1961 *et seq.* The action was referred to Magistrate Judge Leslie G. Foschio for all pretrial proceedings, pursuant to 28 U.S.C. § 636(b)(1).

On September 18, 2012, plaintiff Kramer filed a motion for a temporary restraining order and preliminary injunction against Armor Electric's termination of Kramer as an employee of Armor Electric. Plaintiff Kramer relied upon a provision in a Stipulation and Order from the earlier, state-court phase of the action, which provides Armor Electric will not change the amount of plaintiff Kramer's compensation as an employee during the litigation.

On September 26, 2012, Magistrate Judge Foschio filed a Report and Recommendation, recommending that plaintiff Kramer's motion for a temporary restraining order and preliminary injunction be denied. The Magistrate Judge found that plaintiff Kramer failed to establish irreparable harm or a likelihood of success on the merits.

Plaintiff Kramer filed objections to the Report and Recommendation on October 10, 2012, and defendants filed a response. Oral argument on the objections was held on November 16, 2012.

Pursuant to 28 U.S.C. § 636(b)(1), the Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, after reviewing the parties' submissions and oral argument, the Court adopts the proposed findings of the Report and Recommendation. Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, plaintiff's motion for a temporary restraining order and

preliminary injunction is denied.

The case remains with Magistrate Judge Foschio for pretrial proceedings pursuant to the Text Order referring the case entered on September 6, 2012.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: November 26, 2012